

CONTRACT NObs-347 (formerly NOd-2115)

for

INDUSTRIAL PLANT FACILITIES

BETWEEN

THE NAVY DEPARTMENT

AND

ASBESTOS LIMITED, INCORPORATED

This contract made as of the 24th day of September 1941, between the UNITED STATES OF AMERICA (hereinafter called the Government), represented by the Chief of the Bureau of Ships of the Navy Department acting pursuant to authority vested in him by the Secretary of the Navy (hereinafter called the Secretary), and ASBESTOS LIMITED, INCORPORATED (hereinafter called the Contractor), a corporation organized and existing under the laws of the State of New York, and having its principal place of business at 8 West 40th Street, New York, New York,

WITNESSETH:

WHEREAS, whenever the Secretary finds it impossible to make contracts or obtain facilities for the procurement or construction of items authorized in connection with national defense, he is by law authorized to provide, out of appropriations available to the Navy Department for such purposes, the necessary land, buildings, facilities, utilities and appurtenances thereto, and to operate them, either by means of Government personnel or otherwise; and

WHEREAS, the Secretary has found it impossible, except in the manner hereinafter provided, to make contracts or obtain facilities for the procurement, construction, repair or conversion of naval and other vessels or portions thereof, which are essential to the national defense; and

WHEREAS, the Secretary has determined that, in the national emergency declared by the President on September 8, 1939, and May 27, 1941, to exist, the public exigency requires that the items specified in Schedules 1 and 2 attached hereto (hereinafter called the "Facilities"), and also the items specified in Schedule 3, be provided as an addition to the Contractor's present plant at Millington (Morris County), New Jersey, so as to enable the Contractor to perform contracts with the Government or others; and

WHEREAS, the necessary funds for the purpose of this contract are available under the appropriation 17X0603, Increase and Replacement of Naval Vessels, Construction and Machinery; and

WHEREAS, a Letter of Intent dated September 24, 1941, has been addressed to the Contractor, by the terms of which the Contractor was authorized to institute the acquisition, construction and installation of items substantially as described in Schedules 1, 2 and 3 attached hereto, and the execution of this contract was proposed; and

WHEREAS, the Contractor accepted the terms of said Letter of Intent and has commenced the acquisition, construction and installation of such items:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto do mutually agree as follows:

ARTICLE 1. PRIMARY OBLIGATIONS

(a) The Contractor shall as soon as practicable:

- (i) Obtain and submit to the Department evidence approved by the Department that the Contractor has such right, title and interest as is specified in Schedule 7 in and to the realty described therein (hereinafter called the "Land").
- (ii) In addition to the plans, specifications, lists of machinery and equipment, and estimated costs already approved by the Department, obtain the approval of the Department for such additional detailed plans, specifications, lists of machinery and equipment, and estimated costs as the Department shall require, for the Schedule 2 and 3 Facilities.
- (iii) As the approvals required by subparagraphs (i) and (ii) are given, do or cause to be done to the extent so approved all other things necessary to acquire, construct, install and complete the Schedule 2 and 3 Facilities being obligated to acquire, construct, install and complete the Schedule 2 Facilities only to the extent possible within the total estimated cost thereof stated in Article 6 hereof, as such sum may from time to time be revised in accordance with Article 4 hereof.

(b) The Government shall as soon as practicable acquire the Schedule 1 Facilities, and furnish them to the Contractor for the purposes of this contract.

ART. 2. SUBCONTRACTS

Prior to the letting of each subcontract and the placing of each order for purchases, including items to be supplied directly by the Contractor, the Contractor shall give the Department notice of its intention of so doing and shall comply with any and all requirements which may be imposed by the Department as to the extent to which and the terms and conditions upon which such subcontract or order shall or may be made; and no such subcontract or order shall be made hereunder without the approval of the Department having been first obtained. In addition to such other requirements as may be imposed by the Department, every subcontract and order made by the Contractor in the performance hereof shall provide that title to the item or items to be supplied shall vest in the Government as provided in Article 5 hereof.

ART. 3. INSPECTION

All materials, supplies and equipment furnished and all work done in the performance of this contract shall be subject to such inspection and test both in process and upon completion, and at such places and at such times, as the Department may from time to time determine. The Department shall have the right to reject, within a reasonable time, and to require correction or replacement of such material, supplies, equipment and work as it may determine to be defective. The Contractor shall bear the cost, without reimbursement, of all such correction and replacement which could have been avoided by reasonable diligence on the part of the Contractor or any subcontractor, and the Government shall reimburse the Contractor for the cost of all other such correction and replacement.

ART. 4. CHANGES

The Department by order to the Contractor, or the Contractor with the prior approval of the Department, may at any time make changes in or additions to the items specified in Schedules 1, 2 and 3 and the estimated costs thereof: *Provided, however*, that no such order shall reduce the estimated cost of any such item below the actual authorized cost or authorized commitment theretofore incurred by the Contractor with respect to such item.

ART. 5. TITLE TO FACILITIES

Title to each item of the Schedule 2 Facilities, and to all materials, supplies and equipment therefor, shall vest in the Government as payment is made therefor by the Government. Title to each item of the Schedule 1 and 3 Facilities shall remain in the Government and the Contractor, respectively. Nothing contained in this Article shall relieve the Contractor of any of its duties or obligations under this contract or constitute any waiver of the Government's right to require fulfillment of all of the terms thereof.

ART. 6. ESTIMATES

It is estimated that the total cost of acquiring, constructing, installing and completing the Schedule 2 Facilities will be approximately *Two Hundred Fifty-seven Thousand and Fifty-three Dollars* (\$257,053), and that the Facilities will be ready for use by the Contractor within nine (9) months from the date first above written. The Contractor does not guarantee the correctness of either of these estimates.

ART. 7. DETERMINATION OF COSTS

(a) The Navy Compensation Board shall determine true cost of (i) that part of the performance of this contract the cost of which is to be paid by the Government to the Contractor, including all changes of fixed prices effected pursuant to escalator clauses relating to such prices, (ii) the acquisition of the Schedule 1 Facilities, and (iii) all items which replace items of the Facilities; the decision of such Board or a majority thereof shall be binding on the parties hereto, subject only to the provisions of Article 25 hereof. In determining such true cost said Board shall, subject to the provisions of this Article, employ so far as applicable the accounting methods for determining costs as set forth in Treasury Department Regulations T. D. 5000, and insofar as such regulations are not applicable, shall comply with sound accounting practice. Such true cost shall not include any profit to the Contractor, except that it shall include (i) the full amount of the fixed prices, as changed pursuant to escalator clauses if any relating to such prices (which shall be market or competitive prices, if such are available), at which with the prior approval of the Department the Contractor shall itself have furnished any materials, supplies or equipment or done any work hereunder, and (ii) the full amount of the fees for which with the prior approval of the Department the Contractor shall itself have furnished any materials, supplies or equipment or done any work hereunder on cost-plus-fixed-fee bases.

(b) The Contractor shall, to the extent of its ability, take all trade discounts, rebates, allowances, credits, salvage values, commissions and bonifications available to the Contractor, and if unable to take advantage of any such benefits it shall promptly notify the Department of the reason therefor. In determining the true cost of articles and materials of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all such benefits which have accrued to the Contractor or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor shall not be deducted from gross costs.

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(c) The true cost of the acquisition, construction, installation and completion of the Schedule 2 Facilities, which is to be paid by the Government to the Contractor, shall not exceed the total estimated cost thereof stated in Article 6 hereof, as such sum may from time to time be revised in accordance with Article 4 hereof.

ART. 8. PAYMENTS

(a) The Contractor shall be paid the true cost of: (i) the acquisition, construction, installation and completion of the Schedule 2 Facilities, and (ii) such other reimbursable items as are specifically provided in this contract. True cost shall in each instance be determined in the manner provided in Article 7 hereof.

(b) Once each month the Contractor shall submit to the Navy Compensation Board certified bills for all materials, supplies or equipment furnished or work done hereunder, or advance payments made with the prior approval of the Department by the Contractor to its subcontractors or vendors for materials, supplies or equipment to be furnished or work to be done hereunder, for which the Contractor claims to be entitled to reimbursement hereunder and for which bills have not been previously submitted; and the Contractor may also submit such bills at such other times as the expenditures of the Contractor for which bills have not already been submitted shall exceed five percent (5%) of the total estimated cost of the Schedule 2 Facilities. Within fifteen (15) days after receipt of each such submission of bills, the Government shall pay to the Contractor such amounts thereof as the Navy Compensation Board shall have determined to be true costs reimbursable to the Contractor hereunder.

(c) Upon completion of the acquisition, construction and installation of the Schedule 2 Facilities, final payment of the balance due to the Contractor hereunder on account thereof shall be paid. With its application for such balance due, the Contractor shall submit a release in such form and containing such provisions as shall be approved by the Department.

(d) When the true costs of the acquisition, construction, installation and completion of the Facilities shall be determined by the Navy Compensation Board, it shall certify such costs (hereinafter referred to as the "Acquisition Costs") to the Department and the Contractor: *Provided, however*, that should the said Board at any time find it necessary to revise the Acquisition Costs, such Costs shall be increased or decreased in accordance with any order received by the Contractor and the Department from such Board.

(e) When any payment is to be made hereunder, the Navy Compensation Board, as a condition precedent to approving such payment, may, in its discretion, require that affidavits satisfactory to it be furnished by the Contractor showing what, if any, liens or rights *in rem* of any kind against the Facilities or the materials or equipment on hand for use in the construction thereof have been or can be acquired for or on account of any work done, or any materials or equipment already incorporated as a part of the Facilities, or on hand for that purpose; but it is hereby further covenanted and agreed by the Contractor, for itself and on its own account and for and on account of all persons, firms, associations or corporations furnishing labor and/or material for the Facilities, and this contract is upon the express condition, that no liens or rights *in rem* of any kind shall lie or attach upon or against the Facilities, or materials or equipment therefor, or any part thereof, either for or on account of any work done upon or about the Facilities, or of any materials or equipment furnished therefor or in connection therewith, or of any other cause or thing, or of any claims or demands of any kind, except the claims of the Department: *Provided, however*, that in case the Contractor shall be unable to comply lawfully with such express condition, the Secretary may waive such condition or take such other action as he may deem proper under the circumstances.

(f) Payment of all reimbursable items to which the Contractor shall be entitled under this contract shall be made by the Government in accordance with the provisions of Articles 7 and 8 hereof.

ART. 9. SUSPENSION OR TERMINATION

(a) At any time or times prior to completion of the Schedule 1, 2 and 3 Facilities, the Department may by notice to the Contractor suspend or terminate, in whole or in part, the right and obligation of the Contractor to proceed with the acquisition, construction, installation and completion of the Schedule 2 and 3 Facilities.

(b) No such suspension shall continue for more than six (6) months. Unless the Department, prior to the expiration of such period, shall have either directed the Contractor to proceed with the acquisition, construction, installation and completion of the Schedule 2 and 3 Facilities (whereupon the Contractor shall promptly comply with such direction), or shall have terminated such suspended right and obligation, said right and obligation shall terminate upon expiration of such period.

(c) Upon the Contractor's receipt of any such notice of suspension and during the period of such suspension, and also upon its receipt of any such notice of termination, the Contractor shall promptly stop all acquisition and work in connection with the items designated in such notice, except as otherwise directed by the Department; protect and preserve the same and all materials, supplies and equipment on hand therefor, as the Department shall direct, but not for longer than the Stand-by Period provided in Article 13 hereof; and furnish to the Department such information with respect to all outstanding orders and subcontracts therefor, and take such action with respect to such orders and subcontracts, as may be directed by the Department. The Contractor shall be reimbursed by the Government for the true costs incurred by the Contractor in the performance of its obligation under this paragraph.

(d) Upon the Contractor's receipt of any such notice of termination, or upon the expiration of a suspension period of six (6) consecutive months under paragraph (b) of this Article, Articles 13 and 14

hereof shall become applicable to the items designated in such notice to the same extent as if such termination were the termination of a period of use: *Provided, however*, that nothing herein shall be deemed to limit the obligations of the Contractor to comply with all the provisions of paragraph (c) of this Article.

(e) The Department may also, by notice to the Contractor, at any time or times suspend or terminate the Government's obligation hereunder to acquire and furnish any of the Schedule 1 Facilities.

ART. 10. USE OF FACILITIES AND PAYMENT THEREFOR

(a) The Contractor shall have the right to use any part of the Facilities as soon as it becomes sufficiently completed to permit use; and the Contractor shall diligently perform any and all work within the capabilities of the Contractor and the capacity of the Facilities, which shall from time to time be ordered by the Department, its prime contractors or subcontractors. The terms upon which such work, and all other Government work, shall be performed shall be fairly comparable to those obtainable for the performance of like work by other contractors in similar circumstances, and shall be agreed upon from time to time between the contracting parties: *Provided, however*, that the Contractor's cost for any Government work shall not include reimbursement for any part of construction, amortization or depreciation of the Facilities, but the sums paid by the Contractor for its use of the Facilities, and the real property taxes and expenses of maintenance, insurance and repair of the Facilities which are to be borne hereunder by the Contractor, shall be included in the general overhead of the Contractor, and shall be fairly distributed over all of its work including Government work; and

(b) The right of the Contractor to use the Facilities shall include the right to use them in the performance of work other than Government work: *Provided, however*, that the Contractor shall at all times give such priority to Government work as the Department shall from time to time require.

(c) For the right to use the Facilities the Contractor shall pay to the Government on or before the 15th day of January, April, July and October of each year an amount equal to one and five-eighths percent (1 $\frac{5}{8}$ %) of the Acquisition Costs of the Facilities (as the same may from time to time be revised in accordance with Article 8 (d) or 11 (a) (i) hereof), multiplied by the quotient of the actual productive man-hours worked during the preceding calendar quarter at the Contractor's said plant with both the Facilities and the Contractor's own facilities, divided by two hundred and ten thousand (210,000) (the normal quarterly productive man-hours established for the purposes of this contract): *Provided, however*, that (i) in the event the Contractor's facilities at its said plant shall be increased or decreased, the said figure for the normal quarterly man-hours shall be proportionately revised so as to reflect such changes; (ii) should the Contractor make no use of the Facilities for any period of six (6) consecutive calendar months after the completion thereof, for so long after such period as it shall not make any use thereof no amounts under this paragraph (c) shall accrue until the Contractor shall again make any use of the Facilities, whereupon the Contractor's obligations under this paragraph (c) shall immediately resume; and (iii) in determining any quarterly payment due under this paragraph (c) for any period prior to certification of Acquisition Costs there shall be used, in lieu of Acquisition Costs, the cost as determined by the Department of such of the Facilities as the Department shall determine to have been available for use as of the forty-fifth day of the calendar quarter for which such a payment is to be computed.

(d) The Contractor shall accompany each payment so made with such information, records and verifications as the Department may require in order to determine the correctness of each such payment.

ART. 11. MAINTENANCE, REPAIR AND INSURANCE

(a) From the date first above written to the date of termination of the Contractor's right to use the Facilities, the Contractor shall:

(i) Protect, preserve and maintain the Land, the Facilities, including all parts thereof, and any and all Government-owned supplies, materials and equipment at the site of the Facilities, so as to insure their full availability and usefulness at all times and as may be directed by the Department. Whenever any item of the Facilities or part thereof shall from any cause become obsolete, worn out, lost, disabled, damaged or destroyed, the Contractor shall immediately give notice thereof to the Department, and shall, as authorized or directed by the Department, effect the repair, rebuilding, reconditioning, replacement or disposition of such item or part: *Provided, however*, that no such notice need be given if the Contractor shall not desire to be reimbursed for the costs of such work, and if it shall estimate such costs at *Two Hundred Dollars* (\$200) or less. If, after such notice, the Department shall not authorize or direct that such work shall be done, the Acquisition Costs of the Facilities shall be revised by the Navy Compensation Board so as to reflect any resulting loss of use.

(ii) Procure and maintain in respect of the Facilities and Land such builder's risk, workmen's compensation, employer's liability, public liability, property damage, fire and other insurance, and in such amounts, as is customarily maintained in connection with similar facilities in the locality, and such further insurance as the Department may at any time require. All insurance shall be with such insurers, made payable in such manner, and the evidences thereof delivered to and deposited with such person or persons, as the Department may from time to time require. In the event that any insurance required hereunder shall not be kept in full force and effect by reason of any act or omission of the Con-

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tractor, the Contractor shall pay to the Government all losses which would otherwise have been covered by such insurance. The Government shall pay the Contractor so much of the proceeds of any such insurance paid to the Government, upon items of the Facilities which become lost, damaged or destroyed, as may be necessary to enable the Contractor to effect the repair and replacement thereof as authorized or directed by the Department.

(iii) Pay all lawful real property taxes with respect to the Land.

(b) During any period in which the Contractor shall have the right to use the Facilities in accordance with the provisions of Article 10 hereof, the Contractor shall be reimbursed by the Government (i) for the cost of any war risk or sabotage insurance required by the Department, and (ii) for the costs (except such as may be covered by insurance payable to the Contractor) of replacing any complete items of the Facilities, for the costs of rebuilding or reconditioning any items of the Facilities after the expiration of their respective normal useful lives, and for the costs (except such as may be covered by insurance payable to the Contractor) of repairs to any complete items of the Facilities and of repair or replacement of any parts of such items the necessity for repairing or replacing which shall have been determined by the Department to have arisen out of causes or risks not normally incident to operation of the Facilities: *Provided, however,* that such reimbursement shall be made only in respect of such repair, rebuilding, reconditioning or replacement as shall have been authorized or directed by the Department, and shall not be made where such work shall have been determined by the Department to have been the result of the fault or negligence of the Contractor. All other costs incurred by the Contractor during such period in complying with paragraph (a) of this Article shall be borne by the Contractor: *Provided, however,* that if, during such period, by reason of the failure or refusal of the Department to authorize such repairs or replacements of the Facilities as shall be required to maintain the same in efficient operating condition, the value to the Contractor of its right to use the Facilities shall be substantially reduced, the Government shall reimburse the Contractor for such portion of the expenses incurred by it in complying with said paragraph (a) as the Department may under all the circumstances determine to be equitable; and *Provided further,* that should the Contractor, for lack of work upon which it might employ the Facilities, make no use of the Facilities for any period of six (6) consecutive calendar months after the completion thereof, the Contractor shall be reimbursed by the Government for the costs incurred by the Contractor in complying with paragraph (a) of this Article, excluding costs which the Department shall have determined to have been the result of the fault or negligence of the Contractor, for so long after such period as it shall not make any use thereof and until such time as the Contractor shall again make any use of the Facilities, whereupon its obligation to bear said costs shall immediately resume.

(c) The Government shall reimburse the Contractor for costs incurred by the Contractor in complying with paragraph (a) of this Article during the period prior to the Contractor's use of any part of the Facilities. The Contractor shall also be entitled to reimbursement for such costs which it shall incur thereafter and during any period when it shall have the right to use only a part of the Facilities, to the extent that such costs shall be attributable to Facilities which the Contractor shall not have the right to use. No reimbursement shall, however, be made under this paragraph for any such costs which the Department shall have determined to have been the result of the fault or negligence of the Contractor.

ART. 12. PERIOD OF USE

(a) The rights and obligations of the parties hereto under Article 10 hereof shall become effective at the time therein provided, and shall continue for six (6) months after the Contractor shall have received notice from the Department of its determination that the Facilities are no longer required either for the national defense or for other public use, and upon the expiration of said six (6) months' period, said rights and obligations shall terminate unless the Department shall, not less than ninety (90) days prior to the expiration of said six (6) months' period, receive notice from the Contractor of its election to extend the period of said rights and obligations, together with all other rights and obligations of this contract, for a term of not less than one (1) year nor more than five (5) years from the date of expiration of such six (6) months' period, as the Contractor may specify in its said notice; in such event all such rights and obligations shall continue for the period so specified and shall terminate at the end of any such period, subject to the right of the Contractor to extend such rights and obligations for further terms of not less than one (1) year nor more than five (5) years each, by giving notice to the Department at least ninety (90) days before the termination of each successive period and specifying the period for which it elects to extend the same.

(b) The rights and obligations of the parties hereto which are provided in Article 10 hereof and which may terminate as provided in paragraph (a) of this Article, may also be terminated:

- (1) As to all or any part of the Facilities, if the Secretary shall determine that it is in the public interest to terminate the same and shall notify the Contractor thereof, or
- (2) As to all but not part of the Facilities, if the Contractor shall give to the Secretary sixty (60) days' notice of the Contractor's election to terminate the same, which notice, however, may only be given (i) after the expiration of the existing national emergency, or (ii) after the Government shall have failed for a period of ninety (90) days to make payment to the Contractor of any sum due to it hereunder from the Government and provided the Contractor shall not be in default in the performance of any of the agreements to be performed by it hereunder.

ART. 13. ADDITIONAL PERIOD OF MAINTENANCE

Upon and after the termination in accordance with Article 12 of the Contractor's right to use all of the Facilities, the Contractor shall continue to comply with all provisions of Article 11 (a) hereof for a period of five (5) years (hereinafter called the "Stand-by Period"), and for a period of two (2) years thereafter: *Provided, however*, that at any time, upon giving thirty (30) days' notice to the Contractor, the Department may terminate the Stand-by Period, or the said two-year period, or both. The Contractor shall be reimbursed by the Government for all costs incurred by the Contractor in effecting such compliance, except costs which the Department shall have determined to have been the result of the fault or negligence of the Contractor. During the Stand-by Period the Department shall have the right (i) to use the Facilities or any part thereof, or (ii) to rent the Facilities or any part thereof to any third party or parties, provided the Department shall have first given the Contractor the right to rent the same upon terms which the Department shall deem to be equal to the terms upon which it proposes to rent to such third party or parties. Should the Department so use or rent the Facilities or any part thereof, the Government shall pay to the Contractor for use of the Land such rentals as the Secretary shall determine to be fair and reasonable.

ART. 14. OPTIONS OF CONTRACTOR AND GOVERNMENT

(a) At any time, and from time to time, prior to the termination or expiration of the Stand-by Period, the Contractor, if it desires to purchase the Facilities, may request the Secretary to determine their then fair value. The Secretary, within ninety (90) days after the receipt of any such request, shall determine such fair value, and in making such determination shall give due regard to the original cost of the Facilities, the extent of their prior use, the amount of depreciation and obsolescence chargeable against the Facilities, the value of the Facilities to the Contractor, the replacement cost, and all other facts and circumstances which he may deem relevant. Upon the completion of any such determination, the Secretary shall notify the Contractor of the fair value so determined, and the Contractor for a period of thirty (30) days from the receipt of such notification, and for such additional period if any as may be allowed by the Secretary, shall have the right to purchase the Facilities for a sum equal to such fair value, by making a payment to the Government of an amount equal to such fair value, or by giving notice to the Department of its election to purchase the same at such fair value and entering into a contract with the Government specifying the terms of such purchase: *Provided, however*, that prior to expiration of the existing national emergency, the Contractor may exercise such right to purchase only if it shall satisfy the Department that upon effecting a purchase it will insure, maintain and keep the Facilities available for national defense until expiration of said national emergency. All right of the Contractor so to purchase the Facilities shall terminate either (i) upon the termination of any proceedings to purchase the Facilities in accordance with the provisions of this paragraph which shall be pending at the time of the termination or expiration of the Stand-by Period, or (ii) upon termination or expiration of the Stand-by Period if no such proceedings shall then be pending.

(b) In the event the Contractor shall not exercise its said right to purchase, the Government may purchase the Land, within sixty (60) days after termination of the Contractor's said right, for a sum to be agreed by the Department and the Contractor. If the parties are unable to agree within such period, the fair value of the Land shall be determined by arbitration in the following manner; viz,

Not later than ten (10) days after expiration of the said sixty-day period, the Contractor and the Department shall each appoint an arbitrator, and the two arbitrators so appointed shall agree upon and appoint an umpire, or failing such agreement, either party may thereupon request the Federal District Court for the district in which the Facilities are situate to designate such an umpire. Within thirty (30) days after the appointment of the umpire, the two arbitrators and the umpire, or any two thereof, or, in the event no two of the arbitrators and the umpire can agree, then the umpire shall notify the Department and the Contractor of the fair value of the Land. In the event that either the Department or the Contractor shall fail to appoint an arbitrator within the ten-day period specified above, the arbitrator appointed by the other party shall act as sole arbitrator hereunder, proceed to determine the fair value of the Land and, within thirty (30) days after his appointment, notify the Department and the Contractor of his decision. The cost of arbitration, except the charges of the arbitrator appointed by the Department, shall be paid by the Contractor.

Within thirty (30) days after receipt by the Department of such notice, the Department may effect the purchase of the Land by making payment to the Contractor of an amount equal to the fair value so determined.

(c) In the event neither the Government nor the Contractor shall exercise its right to purchase as provided in paragraphs (a) and (b) of this Article, the Government may remove, but shall not be obligated to remove, the Facilities or any part thereof, and to the extent that the Government exercises such right to remove it shall not be under any duty or obligation to restore any part of the Land affected by such removal, other than to clear the same. In the event the Government shall fail to remove the Facilities within one (1) year from the termination of the Contractor's right to purchase under paragraph (a) of this Article, the Contractor shall have the right to remove at its own expense the Facilities or any part thereof, after giving to the Department sixty (60) days' notice of its intention of so doing. The Contractor shall comply with any directions it may receive from the Department as to the final disposi-

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tion of the parts of the Facilities so removed, and shall be reimbursed by the Government for the cost of such compliance; the proceeds received by the Contractor from any sale of the Facilities or parts thereof shall be paid by the Contractor to the Government.

ART. 15. MARKING

Each item of the Facilities shall be marked by the Contractor to such extent, in such manner, and with such indicia of Government ownership as the Department shall require. Such marking shall be effected by the Contractor as promptly as possible after title to each item shall vest in the Government.

ART. 16. INVENTORY

The Contractor shall keep such running or other inventory of the Facilities as the Department may from time to time require.

ART. 17. PATENT INFRINGEMENT

(a) The Government shall indemnify and save harmless the Contractor against any loss, damage or expense resulting from or occasioned by any infringement or alleged infringement of any letters patent of the United States when such infringement or alleged infringement is the direct and necessary result of compliance with directions of the Government as to the manufacturing processes to be employed or as to the material, patented or otherwise, to be incorporated in the Facilities and when the use or incorporation of noninfringing processes or material would not have complied with the directions of the Government. The Contractor shall promptly notify the Government in writing of any and all claims of infringement arising out of this contract that may from time to time be brought to the Contractor's attention.

(b) The Contractor shall indemnify and save harmless the Government against any loss, damage or expense resulting from or occasioned by infringement or alleged infringement of any letters patent of the United States other than any loss, damage or expense covered by the preceding paragraph of this Article.

ART. 18. FACILITIES TO REMAIN PERSONALTY

No part or item of the Facilities shall be or become a fixture by reason of affixation to any realty whatsoever.

ART. 19. RECORDATION OF CONTRACT

The Contractor will for purposes of recordation duly execute, acknowledge and record either a copy of this contract, or a summary thereof, in such form and manner as the Department may require, with the Schedules and Exhibits thereto either in the form attached to this contract or in such summarized form and with such description of the property therein referred to as the Department may require.

ART. 20. FAILURE OF GOVERNMENT TO INSIST ON COMPLIANCE

The failure of the Government to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this contract shall not be construed as a waiver or relinquishment of the Government's right to the future performance of any such term, covenant or condition, and the Contractor's obligation in respect of such future performance shall continue in full force and effect.

ART. 21. RECORDS

(a) The Contractor shall keep adequate records and books of account showing the actual cost of all items of labor, material, equipment, supplies, services and other expenditures of whatever nature pertaining to that part of the performance of this contract the cost of which the Government is to pay hereunder to the Contractor. The method of accounting employed by the Contractor shall be subject to the approval of the Department, but no material change will be made therein if the same conforms to good accounting practice and is sufficient for the purposes of this contract.

(b) The Department shall at all times be afforded proper facilities for inspecting the Facilities, both during and after their completion, and the premises and all work, materials, records and books of account so pertaining to this contract, and shall at all reasonable times have access thereto for such purposes. All information obtained from said records and books of account shall be treated as confidential.

(c) The Contractor shall preserve all records and books of account so pertaining to this contract: *Provided, however*, that if the Contractor, at any time after six (6) years next following the date upon which the final payment under the contract becomes due, desires to dispose of said records and books of account, he shall so notify the Department, which shall in writing either authorize their destruction or notify the Contractor to turn over the same to the Government for such disposal as it may desire to make thereof; the Contractor shall promptly comply with such notice.

(d) Should the Contractor enter into any subcontract on a cost-plus-a-fixed-fee basis which so pertains to the performance of this contract, the foregoing provisions of this Article shall be applicable to, and included in, such subcontract.

ART. 22. TRANSFER OF CONTRACT AND ASSIGNMENT OF CONTRACTOR'S CLAIMS

(a) Except with the prior written approval of the Secretary, or except as otherwise provided in this Article, neither this contract, nor any interest herein, shall be assigned or transferred by the Contractor.

(b) Claims for monies due or to become due to the Contractor from the Government arising or to arise out of this contract may be assigned to any bank, trust company or other financing institution, including any Federal lending agency. Any such assignment may cover all or any part of any claim or claims arising or to arise out of this contract, shall not be subject to further assignment, and may be made to any one or more such institutions or to any one party as agent or trustee for two or more such institutions participating in the financing of this contract. In the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment, with (i) the General Accounting Office of the Government, (ii) the Department, (iii) the surety or sureties upon the bond or bonds, if any, in connection with this contract, and (iv) the Disbursing Officer of the Navy Department at Washington, D. C., who is hereby designated to make all payments under this contract.

(c) Payments to an assignee of any claims arising under this contract shall not be subject to reduction or set-off for any indebtedness of the Contractor to the Government arising independently of this contract.

(d) In no event shall copies of any plans, specifications or other similar documents marked "Secret," "Confidential," or "Restricted," and annexed at attached to this contract be furnished to any assignee of any claim arising under this contract or to any other party not otherwise entitled to receive the same.

ART. 23. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the payments due and payable hereunder the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by the Contractor upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

ART. 24. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ART. 25. DISPUTES

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the Secretary, whose decision shall be final and conclusive upon the parties hereto. Pending the settlement of any dispute, the Contractor shall diligently proceed with the work as provided herein.

ART. 26. DEFINITION OF "DEPARTMENT"

"Department" as used in this contract shall mean the Secretary, the Chief of the Bureau of Ships, the Inspector of Naval Material, New York, New York, and such other duly authorized representative or representatives as the Secretary or the Chief of the Bureau of Ships may designate from time to time.

ART. 27. LETTER OF INTENT TERMINATED

All authority of the Contractor to act under the aforementioned Letter of Intent is hereby terminated. Work commenced and contracts entered into with the approval of the Department, under the authority of the said Letter of Intent, shall be deemed to have been authorized hereunder and shall be carried out under the terms and conditions hereof and all rights and obligations of the parties hereto under the said Letter of Intent are hereby superseded by the provisions of this contract.

ART. 28. OVERTIME COMPENSATION OF LABORERS AND MECHANICS

The Contractor shall compensate laborers and mechanics for all hours worked by them in connection with acquisition, construction, installation, completion, maintenance and repair of the Facilities at the site thereof, and in excess of eight (8) hours in any one calendar day, at a rate not less than one and one-half (1½) times the basic rate of pay of such laborers and mechanics, and shall include a stipulation in each subcontract that laborers and mechanics employed in connection therewith shall be paid at a rate not less than one and one-half (1½) times their basic rate of pay for all hours worked by them in excess of eight (8) hours in any one calendar day.

ART. 29. CONVICT LABOR

The Contractor shall not employ, in the performance of any work under this contract, any person undergoing sentence of imprisonment at hard labor.

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ART. 30. LABOR STATISTICS

The Contractor shall report monthly, and will, by agreement, require its subcontractors to report in like manner, within five (5) days after the close of each calendar month, on forms to be furnished by the United States Department of Labor: the number of persons on their respective pay rolls, the aggregate amount of such pay rolls, the man-hours worked, and the total expenditures for materials; and the Contractor shall, at the earliest date practicable, furnish to the Department of Labor the names and addresses of all subcontractors on the work: *Provided, however*, that the requirements of this Article shall be applicable only to construction work done hereunder at the site of the Facilities.

ART. 31. NONDISCRIMINATION IN EMPLOYMENT

The Contractor, in performing the work required by this contract, shall not discriminate against any worker because of race, creed, color or national origin and the Contractor further agrees that each subcontract made under this contract will contain a similar provision with respect to nondiscrimination.

ART. 32. NONREBATE

This Article is applicable only to the extent performance of this contract is subject to the Copeland Act.

(a) The Contractor shall furnish to the Government representative in charge at the site of the work covered by this contract, or if no Government representative is in charge at the site, shall mail to the Federal agency contracting for the work, within seven (7) days after the regular payment date of each and every weekly pay roll, an affidavit in the form prescribed by regulations issued by the Secretary of Labor and published in the Federal Register of March 1, 1941, 6 F. R. 1211, or any modification thereof pursuant to the Act of June 13, 1934, 48 Stat. 948 (U. S. Code, Title 40, Secs. 276b and 276c), sworn to by the Contractor or the subcontractor concerned or by the authorized officer or employee of the Contractor or subcontractor supervising such payment, to the effect that each and every person employed on the work has been paid in full the weekly wages shown on the pay roll covered by the affidavit; that no rebates have been or will be made either directly or indirectly to or on behalf of the Contractor or such subcontractor from the full weekly wages earned as set out on such pay roll; and that no deductions, other than permissible deductions as defined in the said regulations, or in any modifications thereof, pursuant to said Act of June 13, 1934, and as described in said affidavit, have been or will be made, either directly or indirectly, from the full weekly wages earned as set out on such pay roll.

(b) The Contractor shall comply with all applicable requirements of the said regulations of the Secretary of Labor, or in any modifications thereof, under the Act of June 13, 1934, and the requirements of this Article of the contract shall be subject to all applicable provisions of such regulations, as so modified.

(c) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work to insure fulfillment of the requirements of this Article.

ART. 33. RATE OF WAGES

This Article is applicable only to the extent performance of this contract is subject to the Davis-Bacon Act.

(a) The Contractor and its subcontractors shall pay all mechanics and laborers employed on work under this contract and directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those determined by the Secretary of Labor as set forth in Schedule 9 hereto, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractors and such laborers and mechanics; and the scale of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the site of the work. The Department shall have the right to withhold from the Contractor and subcontractor so much of accrued payments as may be considered necessary by the Department to pay to laborers and mechanics employed by the Contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the Contractor, subcontractors or their agents.

(b) In the event it is found by the Department that any laborer or mechanic employed by the Contractor or any subcontractor on work under this contract and directly upon the site of the work has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the Contractor, terminate its right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and prosecute the work to completion by contract or otherwise, and the Contractor and its sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

ART. 34. RIGHT OF ACCESS

(a) At all times from the date first above written to the date of the final termination of this contract, the Contractor shall permit the Government to have such access to the Facilities, across any property of the Contractor or otherwise, as the Government may require in order fully to exercise and fulfill all its rights and obligations under this contract and to protect its interests hereunder.

(b) In the event the Contractor shall, at any time during the period provided in paragraph (a) of this Article, enter into any agreement for the sale or lease of any real property in which it may now have or may hereafter have acquired any right, title or interest, the Contractor shall include in such agreement such terms and provisions as may be required by the Department to effect the purposes of paragraph (a) of this Article.

ART. 35. CONTRACTOR'S AGREEMENTS CONCERNING THE LAND

The Contractor shall not lease, sell, assign or otherwise transfer any of the Land occupied by the Facilities, without first having obtained the Department's approval therefor.

ART. 36. ENCUMBRANCES

The Contractor shall not, without the written consent of the Department having been first obtained, knowingly permit any mortgage, lien or other encumbrance to attach to any part or all of the Land, and in the event any such encumbrance shall attach as aforesaid, the Contractor shall promptly give written notice thereof to the Department, and shall take such action with respect thereto as the Department may direct.

ART. 37. NOTICES

No notice, order, determination, requirement, consent or approval by either party hereto or by the Navy Compensation Board, as hereinbefore provided, shall be of any effect unless the same shall be in writing.

ART. 38. SCHEDULES

The Schedules attached hereto, and all matter contained therein, are hereby made part of and incorporated in this contract.

ART. 39. ALTERATION

The following alterations were made in the printed text of this contract before it was executed by the parties hereto:

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IN WITNESS WHEREOF, the parties hereto have duly executed this contract this 5th day of February, 1942.

THE UNITED STATES OF AMERICA,

By s/A. H. VAN KEUREN,
Chief of the Bureau of Ships.

Two witnesses as to Contractor:

s/GEO. H. RHINEHART.

ASEBESTOS LIMITED, INC.,
Contractor.

s/R. A. BADGLEY.

By s/N. E. NEWMAN,
President.

I, E. VAN HORN, certify that I am the Secretary of the corporation named as Contractor herein; that N. E. Newman, who signed this contract on behalf of the Contractor, was then president of said corporation; that this contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

s/E. VAN HORN,
Secretary.

[CORPORATE SEAL]

Approved as to form and execution:

s/T. L. GATCH,
Judge Advocate General.

SCHEDULES

[NOTE: Schedules 1, 3 to 6 inclusive, and 8 have been omitted from this contract, and no references thereto shall be of any force or effect.]

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SCHEDULE 2 FACILITIES (to be furnished by Contractor, cost to be reimbursed by Government)

Item	Estimated Cost	Acquisition Cost
Building (including heating and lighting equipment) _____	\$51,500	
Boilers (including oil burners, oil tank, stack and breeching) _____	35,000	
Boiler accessories (pumps, feed water heater, storage tank, condensate heat exchanger) _____	5,400	
Driers and drier trucks _____	29,000	
Autoclaves (including foundation and rigging) _____	15,000	
Molds and trays _____	22,500	
Piping (steam, exhaust, water, miscellaneous) _____	17,000	
Mixers, disintegrators, fans and cyclones _____	11,685	
Electrical installations _____	10,000	
Motors (for disintegrators and other equipment) _____	4,900	
Lift trucks (hand and electric) _____	5,700	
Saw tables _____	6,000	
Pipe covering and insulation _____	6,000	
Installation costs _____	10,000	
Engineering and supervision _____	4,000	
Reserve for contingencies _____	23,368	
TOTAL _____	\$257,053	

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SCHEDULE 7

The Land, which is to serve as site for the Facilities, is a tract situate in the Township of Passaic, Morris County, New Jersey, is shown on the plat attached hereto† as Exhibit I, and is described as follows:

Beginning at a point in the center line of Main Street where the same is intersected by the southerly line of lands of Gustave A. Lundgren by deed bearing date July 22, 1922, and recorded in the Morris County Clerk's Office in Book E-28, page 77, etc.; from said point of beginning running; thence (1) partly along lands of said Lundgren South 76 degrees 7 minutes East 166.60 feet to the center line of a Railroad siding; thence (2) along the center line of said Railroad siding southerly 296 feet more or less to the prolongation easterly of the northerly outside face of a one-story concrete block building; thence (3) partly along the outside northerly face of said Building North 86 degrees 15 minutes West 195.10 feet to the aforementioned center line of Main Street; thence (4) along the center line of Main Street North 1 degree 51 minutes East 44.77 feet; thence (5) still along the center line of Main Street North 13 degrees 53 minutes East 282.07 feet to the point or place of Beginning.

The Contractor warrants that the above is an accurate and complete description of the Land which is to serve as site for the Facilities, and that the said Land is owned by it free and clear of all encumbrances.

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SCHEDULE 9

The following are the wage rates determined by the Secretary of Labor and referred to in Article 33 hereof:

† The plat referred to is included in the original signed contract, but is not included in this reprint.

January 27, 1942.

DECISION OF THE SECRETARY

This case is before the Department of Labor pursuant to a request of January 16, 1942, by the Bureau of Ships of the Navy Department for wage predetermination under the Davis-Bacon Act, as amended (Act of August 30, 1935, 49 Stat. 1011, U. S. C. title 40, sec. 276 (a)), with respect to a contract or contracts for the construction of additional facilities plant at Millington, Morris County, New Jersey.

In accordance with the terms of the regulations promulgated by the Secretary of Labor (Reg. 503, dated September 30, 1935), a study has been made of wage conditions in the locality on the basis of the data submitted by the Bureau of Ships and other information assembled by the Department of Labor. The following are hereby found to be the prevailing rates of wages for the requested crafts:

	Per Hour
Asbestos workers.....	\$1. 65
Asbestos workers' improvers.....	1. 125
Blacksmiths.....	1. 00
Boilermakers.....	1. 65
Boilermakers' helpers.....	1. 23
Bricklayers.....	1. 50
Carpenters, journeymen.....	1. 50
Cement finishers.....	1. 50
Electricians.....	2. 00
Electricians' helpers.....	1. 15
Firemen and oilers.....	1. 25
Form builders.....	1. 50
Glaziers.....	1. 375
Iron workers, structural.....	2. 00
Iron workers, ornamental.....	2. 00
Iron workers, reinforcing.....	2. 00
Iron workers' apprentices:	
1st 6 months, 50% of journeymen's rate.	
2d 6 months, 60% of journeymen's rate.	
2d year, 66% of journeymen's rate.	
Laborers, building.....	. 875
Laborers, concrete.....	. 875
Laborers, unskilled.....	. 875
Lathers.....	1. 90
Machinists.....	1. 65
Machinists' helpers.....	1. 25
Marble setters.....	2. 00
Marble setters' helpers.....	. 875
Mason tenders.....	. 875
Mortar mixers.....	. 875
Painters.....	1. 25
Paperhangers.....	1. 25
Piledrivermen.....	1. 85
Pipe layers (concrete and clay).....	. 875
Plasters.....	1. 50
Plasterers' tenders.....	. 875
Plumbers.....	1. 50
Plumbers' apprentices, helpers:	
1st year \$3 per day.	
2d year \$4 per day.	
3d year \$5 per day.	
4th and 5th year \$6 per day.	

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Article 33

Power equipment operators:

	Per Hour
Air compressors.....	\$2.00*
Blade graders.....	1.25
Bulldozers.....	1.25
Cranes, derricks, draglines.....	2.00*
Finishing machines (cement, concrete, pavement).....	1.25
Hoists.....	2.00*
Hoists, on steel.....	2.25
Mixers, 10-S or smaller with skip.....	2.00*
Mixers, larger than 10-S.....	2.00*
Motor graders.....	1.25
Piledrivers.....	2.025
Pumps, 4 inches and over.....	2.00*
Rollers, on buildings.....	2.00
Rollers, on roads.....	1.75
Scrapers.....	1.25
Shovels.....	2.00*
Tractors.....	1.25
Trenching machines.....	2.00*
Roofers.....	1.72%
Roofers' helpers.....	1.00
Sheet-metal workers.....	1.50
Sheet-metal workers' helpers.....	.75
Soft-floor layers (linoleum).....	1.50
Steam fitters.....	1.50
Steam fitters' apprentices:	
1st year \$5 per day.....	
2d year \$5 per day.....	
3d year \$6 per day.....	
4th year \$6 per day.....	
5th year \$8 per day.....	

Riggers.—Receive rates prescribed for craft performing operation to which rigging is incidental.

Riveters.—Receive rates prescribed for craft performing operation to which riveting is incidental.

Stone masons.....	1.50
Terrazzo workers.....	1.78
Terrazzo workers' helpers.....	1.30
Tile setters.....	1.68%
Tile setters' helpers.....	1.25
Truck drivers.....	1.05
Tank builders.....	1.60
Tank builders' helpers.....	1.35
Sprinkler fitters.....	1.50
Sprinkler fitters' helpers.....	.87½
Waterproofers.....	1.72%

Welders.—Receive rate prescribed for craft performing operation to which welding is incidental.

*When used on foundation, pier or dock work the rate is \$2.02½ per hour.

These rates are to be considered prevailing as to any contract executed within ninety (90) days after the date of this decision, unless the decision is modified or superseded prior to the execution of such contract. In the event of such modification or superseding, the rates then established shall be considered prevailing as to any contract executed within ninety (90) days after the date of the decision modifying or superseding the former rates. The rates which are effective at the date of execution of a contract shall be considered the minimum rates, as to that contract, thereafter throughout the entire period of performance under the contract.

In accordance with the provisions of the said Davis-Bacon Act, as amended, these are the minimum wages to be inserted in the specifications for said contract or contracts, and any class of laborers and mechanics (including apprentices) not listed in the preceding paragraph, which will be employed on this contract or contracts, shall be classified or reclassified conformably to the foregoing schedule. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for final determination.

By direction of the Secretary of Labor,

s/D. W. TRACY.